IN THE

Supreme Court of the United States

October Term, 1967.

No. 34.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,
Petitioner,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT.

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BRIEF FOR RESPONDENT.

QUESTION PRESENTED.

Where an employer association and a union entered into a collective bargaining agreement which contained a broad, all inclusive arbitration clause requiring the submission of all unresolved disputes to final and binding arbitration and shortly after the execution of the agreement a dispute arose over an interpretation of a clause in the agreement which was submitted to the Impartial Arbitrator who ruled in favor of the employer association, did the Court below have jurisdiction under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185, in an action for specific performance to enter an order enforcing the Arbitrator's Award where it was uncontradicted that the union refused to comply with the Award and took the position that it was not bound by the Award.

STATUTE INVOLVED.

The Labor Management Relations Act, Section 301(a), 61 Stat. 156, 29 U. S. C. A. 185, which provides as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE.

This was an action by respondent, Philadelphia Marine Trade Association (PMTA), under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185, for specific performance to enforce an Arbitrator's Award.

PMTA is a multi-employer association which acts as the collective bargaining agent for its members consisting of steamship owners, operators, agents, stevedores and other maritime companies in the Port of Philadelphia. Petitioner (Union) represents the deepsea longshoremen on the Philadelphia waterfront. On February 11, 1965, the respondent and petitioner entered into a new collective bargaining agreement which extended retroactively from October 1, 1964 to September 30, 1968 (R. 6-9). This was a "novel" and "unusual" contract since it established for the first time a new system for hiring longshoremen in Philadelphia (R. 36).

Previously the longshoremen were hired on a particular day at various "shape-up" points along the waterfront (R. 36). Men needed for an 8:00 A. M. start were hired at 7:30 A. M., that morning; men required for a 1:00 P. M.

start were hired at 7:55 A. M., that morning. Once a man was hired for either an 8:00 A. M. or a 1:00 P. M. start, he was guaranteed four hours pay for the morning or afternoon period but if he was not hired, he received no pay at all for reporting at the "shape-up" (R. 11).

Under the new contract (R. 6-9), a "day-before hire" system was inaugurated. Under this system, longshoremen were registered in regular gangs and for the most part orders were given the previous day to commence work the next day at a particular job site (R. 6-7). Replacements for gangs which showed up short were obtained from a pool of men who assembled at a joint dispatching site. The contract provided that gangs which were hired for a Monday or a day following a holiday could be cancelled by 7:30 A. M. that day if the vessel did not arrive.[1]

In addition, the contract also provided in a separate section from the above provision that gangs which were ordered for an 8:00 A. M. start Monday through Friday could be "set back" at 7:30 A. M. for a 1:00 P. M. start. Where this set back was invoked, the men were guaranteed four hours pay at 1:00 P. M. and one hour's pay for reporting in the morning, or a total of five hours guaranteed pay. This was a radical change from all of the preceding contracts. This provision was contained in Section 10(6) of the contract which provided as follows (R. 7):

> "Gangs ordered for an 8 A. M. start Monday through Friday can be set back at 7:30 A. M. on the day of work to commence at 1 P. M. at which time a four-hour guarantee shall apply. A one-hour guarantee shall apply for the morning period unless employed during the morning period."

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1. Section 10(5) provided:

"For work commencing at 8:00 A. M. on Monday or at 8:00 A. M. on the day following a holiday, employers to have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A. M." (R. 7)

As can be readily seen, there were no qualifications attached to the employer's invoking the set back rights under Section 10(6) of the contract.

However, on April 26, 1965, a dispute arose between the PMTA and the Union over the interpretation of this section of the contract (R. 4-5). Gangs which were hired for an 8:00 A. M. start that day were notified by the employer to report for work at 1:00 P. M. The Union took the position that the "set back" clause, Section 10(6), applied only in the case of a non-arrival of a vessel in port and since the vessel was in port that day the Union insisted that the men could not be set back. The PMTA took the position that the gangs could be set back without qualification under the above section of the contract (R. 20-26).

This dispute was submitted to the Grievance Committee under the contract and when it could not be resolved, it was submitted to the Impartial Arbitrator in accordance with the broad arbitration clause in the contract.[2] Arbitration hearings were held before the Impartial Arbitrator on April 30, May 3, and May 5, 1965, at which time voluminous testimony was taken as to the interpretation of the contract clause in dispute (R. 16-31). At the outset of the hearing on April 30, 1965, it was agreed by both parties that the Arbitrator's decision would be "final and binding" (R. 48, 50-51, 115 and Plaintiff's Exhibit No. 1).

On June 11, 1965, the Arbitrator issued his Award. In a "thorough, well reasoned decision" (R. 116), the Impartial Arbitrator analyzed the testimony of both parties, set forth the respective contentions of the parties and ruled in favor of respondent that the set back "may be invoked by the Employer without qualification" (R. 30-31).[3]

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2. Section 28 of the contract provided for arbitration of "All disputes and grievances of any kind or nature whatsoever arising under the terms and conditions of this agreement, and all questions involving the interpretation of this agreement . . ." (R. 12-13).

3. The Arbitrator considered all of the contentions asserted by the Union, including its contention that the so-called inclement

However, on Friday, July 30, 1965, an identical issue arose over the set back clause and the Arbitrator's Award. An Employer member of PMTA, in accordance with Section 10(6) of the contract and the Award of the Impartial Arbitrator, elected to set back gangs which had been ordered the previous day for an 8:00 A. M. start. The Union refused to permit these men to report to work at 1:00 P. M. and the vessel involved was forced to remain idle (R. 5). During the morning of July 30, the Executive Secretary of PMTA, Alfred Corry, talked to the President and two business agents of the Union regarding this dispute. The President of the Union, Richard Askew, advised Corry that the Arbitrator's Award relating to the set back clause "only applied to the non-arrival of a ship" (R. 64). When Corry reminded him that the Arbitrator's Award applied "without qualification" Askew said: "it does not and they were not going to live by it" (R. 65). Shortly

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weather clause applied. This contention is specifically referred to in the Award (R. 24). The inclement weather clause was section 9(h) in the prior agreement and the Union contended that it "remained intact". In fact, the president of the Union read a prepared statement covering 21 pages in which it was forceably argued that the inclement weather clause applied and that the men were entitled to four hours pay for reporting in the morning where they were set back because of weather. Furthermore, contrary to petitioner's statement (Brief p. 3) section 9(h) did not provide for "a four-hour guarantee". That section specifically provided for "the applicable guarantee" (R. 12). Moreover, under section 16 of the existing agreement in case of conflict, section 10(6), the set back clause, prevailed over section 9(h) (R. 9).

In addition, the Arbitrator did not decline to hear summation from counsel nor did he state that "he did not desire any briefs from the parties" as asserted by petitioner (Brief pp. 3-4). On the contrary, he gave both parties the opportunity to summarize and merely stated that he did not think briefs were "necessary". All of the testimony before the Arbitrator was transcribed, covering three volumes of 334 pages. It was not made a part of the record in this case but can be provided if this Court desires to review it.

It should also be noted that the Union never took any legal steps to set aside the Arbitrator's Award and that in this appeal, petitioner is attempting to re-argue the award in spite of the fact that the merits of that award are not before this Court.

after this separate conversation between Corry and Askew, Corry called the Central Dispatching Office and had another conversation with Askew and two business agents of the defendant Union, who told him that "they were not going to abide by the Arbitrator's decision" (R. 65).

On Monday, August 2, 1965, the PMTA filed its complaint in the District Court (R. 3-6). The complaint referred to the contract between the parties, the Arbitrator's Award covering the set back clause, the dispute of July 30, 1965 in which the PMTA was advised "that the union does not agree with the Arbitrator's Award and does not intend to comply with the terms of such Award", and prayed that "in view of the stated and confirmed intent of the union to disregard the Arbitrator's Award dated June 11, 1965 . . . that the Court set an immediate hearing and enter an order enforcing the Arbitrator's Award. . . ." The complaint did not pray for any injunction against strikes, work stoppages, or picketing as contended by petitioner.

A hearing was fixed for Tuesday, August 3, 1965, at which time the Court took testimony regarding the Union's refusal to abide by the Arbitrator's Award. However, the Court decided not to issue any order since the men who had been hired to work the vessel on July 30 returned to work on the morning of the Court's hearing. The Court was advised that under "economic duress" the vessel's operators paid the men wages to which they were not entitled because the operators could not afford to keep the vessel idle any longer (R. 40; 43-44). The Court also was advised by counsel for the Union that the Union was bound by the Arbitrator's Award, contrary to the position taken by the Union's officers, and based on these assurances the Court decided to keep the case open for either side to bring to the Court's attention any further dispute which occurred involving the Arbitrator's Award (R. 46; 73).[4]

4. In assuring the Court that the Union was bound by the Arbitrator's Award, counsel for the Union said during the hearing on August 3, 1965, that:

On September 13, 1965, another identical dispute arose involving the set back clause and the Arbitrator's Award. Four employer members of PMTA, in accordance with Section 10(6) of the contract and the Award of the Impartial Arbitrator, elected to set back gangs which had been hired for an 8:00 A. M. start that day. In spite of the assurances given to the District Court by counsel for the Union at the hearing on August 3, 1965, that the Union

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"Mr. Weiner: —We, that is, the union, make no bones about the fact that they are unhappy with the Arbitrator's Award, but we realize that we are stuck with it" (R. 35).

"Mr. Weiner: —Now, these two provisions—primarily, the set back provision—were the subject of an Arbitrator's Award back in April, and the Arbitrator decided contrary to the union's position that this set back could be invoked for any reason, not only for non-arrival of a vessel or for inclement weather. It had been the union's position—it still is—although it is moot now—that the set back could only be for specific reasons, either for non-arrival of a vessel, for inclement weather, or for compelling reasons like that which was not within the control of the Employer" (R. 38).

"Mr. Weiner: —And we have never taken the position. We have taken the position that although we don't like this award we are going to follow it, but we are also going to insist that the employer follow the award and follow the contract to the letter" (R. 40).

"Mr. Weiner: —Before your Honor indicated maybe I was giving double talk; I wasn't. The union has never stated and it is not the union's position today that we will not live up to this Arbitrator's Award, even though we don't like it, that we want both sides to live up to the contract. It is not a question only of the union living up to it. Both sides should live up to it. We are willing to live up to it. The men are back to work" (R. 45)

"Mr. Adler: —We are bound by the Arbitrator's Award, to the Award which he has set forth. He has said that the language of 10(6)—he has defined 10(6) as being clear and unequivocal and it should be enforced in the wording clearly expressed. It speaks for itself we are so bound" (R. 59).

"The Court: —The only thing that is clear to me that you said—Mr. Weiner said—you are bound by this Arbitration Award. Now, then——

"Mr. Adler: —For whatever that award speaks" (R. 60).

was bound by the Arbitrator's Award, the President of the Union, Askew, announced on the public address system at the Central Dispatching Office that the gangs which had been set back for work at 1:00 P. M. that day should not report for work that day but should report the following day. He also announced that gangs which had been properly cancelled under Section 10(5) of the contract that day and instructed to report for work the following day at 8:00 A. M., should report for work that day at 1:00 P. M. (R. 91-97).

A total of fifteen gangs employed by four separate companies involving approximately three hundred and thirty men and four ships were affected by the above announcement of the President of the Union. Accordingly, counsel for PMTA, not knowing what would happen at 1:00 P. M., that day, notified the District Court during the morning of September 13 of the crisis which had developed because of the defiant announcement made by the President of the Union. The Court was notified in accordance with the agreement reached at the hearing on August 3, 1965 (R. 46; 73). The District Court set a hearing for 2:00 P. M. that day but this hearing was postponed until the following day in order to give counsel for petitioner an opportunity to consult with his client (R. 83). The hearing scheduled for September 14 was then postponed until September 15, 1965 because of the press of the Court's business.

At the hearing on September 15, there were no strikes, work stoppages, or picketing on the Philadelphia waterfront.[5] The District Court heard the uncontradicted testi-

5. By the afternoon of September 13, all the gangs, except four employed by one company, reported for work in spite of the Union's announcement. The Court was requested to enter an order enforcing the award to avoid harassing tactics of a similar nature in the future (R. 94, 99, 104). Counsel for respondent stated:

> "Your Honor, even if all the gangs for all of the employers had reported for work at 1:00 o'clock we would still want to continue with this hearing to have an order handed down to make it it perfectly clear to the defendant that it is required to comply with the Arbitrator's Award because we cannot operate

mony of Corry that he talked to Askew on September 13 and that Askew confirmed to him that he had made the announcement referred to above advising that men who had been set back that day were not to report to work at 1:00 P. M. that afternoon (R. 91-94). Corry also testified that Askew further stated: "that the set back only applied to non-arrival of a ship and that he wanted to re-arbitrate" (R. 100). In addition, Evans, the Chief Dispatcher for the PMTA at the Joint Dispatching Office, testified that he was present and heard Askew make the announcement referred to above (R. 95-97). He testified that Askew said: "That the gangs that were set back at 1 o'clock on that date were to report the following day at 8:00 A. M. The gangs that were cancelled out that morning were to report at 1 o'clock that same day" (R. 97). All of the respondent's testimony at the hearings on August 3, and September 15, 1965, was uncontradicted as the petitioner did not introduce any evidence to contradict or rebut any of the respondent's testimony. Accordingly, the District Court on September 15, 1965, entered the order appealed from which simply enforces the Award of the Impartial Arbitrator and requires petitioner "to comply with and to abide by the said Award" (R. 113).

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in this port if we are going to be continually harassed by the Union in taking the position that they are not going to abide by an Arbitrator's Award, and we cannot continue to live under a situation where from one day to another we do not know whether a similar announcement will be made telling the men not to report for work." (R. 78)

SUMMARY OF ARGUMENT.

Federal Courts have jurisdiction to enforce arbitration awards under Section 301 of the Labor Management Relations Act. It was agreed in this case that the award would be final and binding. After it was rendered it became part of the collective bargaining agreement and petitioner's subsequent refusal to abide by the award was a breach of contract within the literal term of Section 301.

This Court has sanctioned and approved the enforcement of arbitration awards under Section 301. The *Lincoln Mills* case (*infra*) promulgated the guidelines for the future enforcement of arbitration agreements. In *United Steelworkers v. Enterprise Corp.* (*infra*) and *Retail Clerks v. Lion Dry Goods, Inc.* (*infra*), this Court specifically approved the enforcement of arbitration awards. *Atkinson v. Sinclair Refining Co.* (*infra*) upon which petitioner places sole reliance is inapposite because it involved an injunction against work stoppages. There was no award involved in that case since the parties did not ever proceed with arbitration. This case was for specific performance of the award based upon petitioner's uncontradicted statements that it did not like the award, that it was not going to be bound by the award and that it did not intend to comply with the award. There were no work stoppages in this case at the time the order enforcing the award was issued.

Voluntary arbitration is the kingpin of our national labor policy. In addition to Section 301, this national labor policy is also expressed in Sections 201 and 203(d) of the Labor Management Relations Act. An Arbitrator's Award is part and parcel of the arbitration process which is so highly favored in our labor laws. The failure to enforce a final and binding award would wreck our national labor policy and cause chaos in labor relations in this country. No purpose would be served in compelling parties to pro-

ceed with arbitration unless the resulting award could be enforced by either party if it is violated. The prohibitions against injunctions contained in the Norris-LaGuardia Act have no application to this case. Actually, the Norris-LaGuardia Act, like the Labor Management Relations Act, was intended to foster the settlement of disputes voluntarily by arbitration.

ARGUMENT.

1. The Court Below Had Jurisdiction Under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185, to Enforce the Arbitrator's Award Where the Order Did Not Enjoin Any Strike, Work Stoppage or Picketing But Was Directed against the Officers of the Union Who Refused to Abide by a Final and Binding Award.

In urging that there is no jurisdiction under Section 301 of the Labor Management Relations Act to enforce an Arbitrator's Award where the parties have voluntarily agreed in a collective bargaining contract to submit all their unresolved disputes to arbitration and have further agreed that the Arbitrator's Award would be final and binding, the petitioner is asking this Court to reverse its prior decisions interpretating Section 301, to ignore the leading commentators on the subject, and to repudiate the will of Congress as expressed in Sections 201, 203(d) and 301 of the Labor Management Relations Act. In short, the petitioner is asking this Court to nullify the established national labor policy of settling disputes voluntarily by arbitration and to return the settlement of industrial disputes to a jungle of guerilla warfare with no established rules or regulations.

At the outset, it should be pointed out that the order which was entered in this case did not and could not have enjoined any strike, work stoppage, or picketing since there was none in existence when the order was entered. The order was strictly affirmative and mandatory in nature requiring the petitioner "to comply with and to abide by the said Award" (R. 113). The order was directed against the officers of petitioner who despite the assurances given to the Court at the hearing on August 3, 1965 persisted in their refusal to abide by the Award. Before the order was

entered, respondent made it clear that it was not "seeking an injunction" and that it was not "seeking to enjoin work stoppages" (R. 111).[6] Respondent recognized that if petitioner did not comply with the "Court's order then subsequent proceedings will have to be taken".[7]

(A) Prior Decisions of This Court.

In the leading case, *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, 77 S. Ct. 912, 1 L. ed. 2d 972 (1957), this Court set forth the jurisdictional powers granted to Federal Courts under Section 301 and laid down the guidelines for future suits under Section 301. In analyzing the divergent views of lower courts prior to that decision, this Court said:

> "Other courts—the overwhelming number of them —hold that § 301(a) is more than jurisdictional—that it authorizes federal courts to fashion a body of federal

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6. Counsel for respondent stated:

> "Mr. Scanlan: —Before Mr. Freedman says anything, Your Honor, I would like to say one other thing: We are not seeking an injunction. We are not seeking to enjoin work stoppages. It is quite clear what we are seeking is the enforcement of this Arbitrator's Award and asking that the defendant be ordered to comply with the said Award. That's what we are seeking.
>
> "The Court: —In the event they do not comply with the said Award——
>
> "Mr. Scanlan: —That is an event we will have to face, Your Honor. If the order is issued by the Court and the defendant elects not to comply with the Court's order then subsequent proceedings will have to be taken." (R. 111)

7. Petitioner is confusing the subsequent contempt proceedings which were taken almost six months later when petitioner violated the Court's order in an attempt to establish retroactively that the order involved in this appeal enjoined a work stoppage. The contempt proceedings are the subject of a separate appeal, No. 78, with argument to follow this appeal. These proceedings were taken in accordance with the statement of this Court in footnote 23 of *Sinclair Refining Company v. Atkinson*, 370 U. S. 195, 82 S. Ct. 1328, 8 L. ed. 2d 440 (1962).

law for the *enforcement* of these collective bargaining agreements and includes within that federal law specific performance of promises to arbitrate grievances under collective bargaining agreements. Perhaps the leading decision representing that point of view is the one rendered by Judge Wyzanski in *Textile Workers Union v. American Thread Co.*, 113 F. Supp. 137. That is our construction of § 301(a), which means that the agreement to arbitrate grievance disputes, contained in this collective bargaining agreement, should be specifically enforced." (emphasis supplied) (U. S. at 450-451, L. ed. at 977-978)

In reviewing the legislative history of Section 301, this Court pointed out that:

"Both the Senate Report and the House Report indicate a primary concern that unions as well as employees should be bound to collective bargaining contracts. But there was also a broader concern—a concern with a procedure for making such agreements enforceable in the courts by either party . . ." (U. S. at 453, L. ed. at 978)

". . . Congress was also interested in promoting collective bargaining that ended with agreements not to strike. The Senate Report, supra, p. 16, states:

'. . . Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal Courts . . .' (U. S. at 453-454, L. ed. at 979)

". . . As stated in the House Report, supra, p. 6, the new provision 'makes labor organizations equally responsible with employers for contract violation and provides for suit by either against the other in the United States district courts . . .'" (U. S. at 454, L. ed. at 979)

> "Plainly the agreement to arbitrate grievance disputes is the quid pro quo for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy *that federal courts should enforce these agreements* on behalf of or against labor organizations and that industrial peace can be best obtained only that way." (emphasis supplied) (U. S. at 455, L. ed. at 979)

With respect to the substantive law to be applied in suits under Section 301, this Court stated:

> "We conclude that the substantive law to apply in suits under § 301(a) is federal law which the courts must fashion from the policy of our national labor laws . . . The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem." (U. S. at 456-457, L. ed. at 980-981)

In the *Lincoln Mills* decision, this Court unquestionably sanctioned a broad construction of Section 301 which would include the specific enforcement of an Arbitration Award which was part and parcel of the collective bargaining agreement. Any attempt to limit *Lincoln Mills* to jurisdiction to compel the parties to go to arbitration but with no power to enforce the resulting Arbitration Award would be self-defeating. There would be no reason for the parties to proceed with arbitration if the award could be disregarded by either party. The chaotic effect such a situation would have on labor arbitration in this country is readily apparent.

In *United Steelworkers v. Enterprise Corp.*, 363 U. S. 593, 80 S. Ct. 1358, 4 L. ed. 2d 1424 (1960), this Court affirmed the decision of the lower Court which granted specific enforcement of an Arbitrator's Award. There this Court said:

> "A mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award . . ." (U. S. at 598, L. ed. at 1428)

In the instant case, there is no ambiguity whatsoever in the Arbitrator's Award. Consequently, the award was properly enforced.

In *United Steelworkers v. Warrior & Gulf Navigation Company*, 363 U. S. 574, 80 S. Ct. 1347, 4 L. ed. 2d 1409 (1960), this Court reaffirmed its broad interpretation of Section 301 by stating that:

> "We held in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, 1 L. ed. 2d 972, 77 S. Ct. 912, that a grievance arbitration provision in a collective agreement could be enforced by reason of § 301(a) of the Labor Management Relations Act and that the policy to be applied in enforcing this type of arbitration was that reflected in our national labor law. The present federal policy is to promote industrial stabilization through the collective bargaining agreement. A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement . . . Here arbitration is the substitute for industrial strife . . ." (U. S. at 577-578, L. ed. at 1414)

In *Dowd Box Co. v. Courtney*, 368 U. S. 502, 82 S. Ct. 519, 7 L. ed. 2d, 483 (1962), this Court said:

> "The Labor Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial

peace through encouragement and refinement of the collective bargaining process. It was recognized from the outset that such an effort would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance that the contract they had negotiated would be honored. Section 301(a) reflects congressional recognition of the vital importance *of assuring the enforceability of such agreements.*" (emphasis supplied) (U. S. at 509, L. ed. at 488)

In *Retail Clerks, Locals 128 and 633 v. Lion Dry Goods, Inc.,* 369 U. S. 17, 82 S. Ct. 541, 7 L. ed. 2d 503 (1962), certiorari was granted "because of the importance of the questions to the *enforcement* of the national labor policy as expressed in Section 301(a)" (emphasis supplied). In that case, the action was by the union under Section 301(a) and (b) "seeking to compel respondents compliance with two allegedly binding arbitration awards . . ." ". . . the stores and the locals participated fully in the ensuing arbitration proceedings; and the award went to the Locals on both grievances. The stores' refusal to accede to those awards prompted this suit." There this Court said:

> "If this kind of strike settlement were not enforceable under § 301(a), responsible and stable labor relations would suffer, and the attainment of the labor policy objective of minimizing disruption of interstate commerce would be made more difficult. It is no answer that in particular case the agreement might be enforceable in state courts: a main goal of § 301 was precisely to end 'checkerboard jurisdiction.'" (U. S. at 27, L. ed. at 510)
>
> "We conclude that the petitioners' action for alleged violation of the strike settlement agreement was cognizable by the District Court under § 301(a)." (U. S. at 29-30, L. ed. at 511)

The above decision establishes that District Courts have jurisdiction under Section 301 to compel compliance

with arbitration awards and is dispositive of the issue involved in the instant case.

In *Teamsters Union v. Lucas Flour Co.*, 369 U. S. 95, 82 S. Ct. 571, 7 L. ed. 2d 593 (1962), this Court held that a strike over a dispute which a contract provides shall be settled exclusively by binding arbitration is a breach of contract despite the absence of a no-strike clause, saying:

> "To hold otherwise would obviously do violence to accepted principles of traditional contract law. Even more in point, a contrary view would be completely at odds with the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare." (U. S. at 105, L. ed. at 600)

In *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238, 82 S. Ct. 1318, 8 L. ed. 2d 462 (1962), in referring to suits under Section 301, this Court said:

> "Consequently, in discharging the duty Congress imposed on us to formulate the federal law to govern § 301(a) suits, we are strongly guided by and do not give a niggardly reading to § 301(b). 'We would undercut the Act and defeat its policy if we read § 301 narrowly' ". (U. S. at 248-249) L. ed. at 470)

Petitioner places its sole reliance on the other *Atkinson v. Sinclair Refining Co.*, 370 U. S. 195, 82 S. Ct. 1328, 8 L. ed. 2d 440 (1962), decided the same day as the above case. However, that decision is completely inapposite to the facts in the instant case. In that case, the employer specifically sought an injunction to enjoin "work stoppages" and "strikes" which occurred on nine separate occasions over a period of nineteen months. Sinclair averred in its complaint in this case that the contract provided for "compulsory, final and binding arbitration", but not any of these disputes were submitted to arbitration. Consequently, there was no arbitration award to enforce and in Sinclair's suit it did not even ask the Court to compel the Union to submit the disputes to arbitration. In short, the employer sought an injunction without even

attempting to exhaust the arbitration process. This Court simply refused to sanction an injunction under those circumstances. But in doing so, this Court pointed out in unmistakably clear language that it was reaffirming its prior decisions covering the enforcement of arbitration agreements. In referring to its decisions in *Lincoln Mills, United Steelworkers v. Enterprise Wheel & Car Corp.* and *United Steelworkers v. Warrior & Gulf Navigation Co.* (*supra*), this Court said:

> "To the extent that those cases relied upon the proposition that the *arbitration process* is a 'kingpin of federal labor policy', we think that proposition was founded not upon the policy predilections of this Court but upon what Congress said and did when it enacted § 301. Certainly we cannot accept any suggestion which, would *undermine* those cases . . ." (emphasis supplied) (U. S. at 213, L. ed. at 452)

Petitioner's argument, if followed, would not only undermine the above cases, but would knock out the "kingpin of federal labor policy".

In *Drake Bakeries v. Local* 50, 370 U. S. 254, 82 S. Ct. 1346, 8 L. ed. 2d 474 (1962), which was decided the same day as the *Atkinson* decision (*supra*) relied upon by petitioner, this Court said:

> "In passing § 301, Congress was interested in the *enforcement* of collective bargaining contracts since it would 'promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace' (S. Rep. No. 105, 80th Cong, 1st Sess. 17). It was particularly interested in placing 'sanctions behind agreements to arbitrate grievance disputes'. The preferred method for settling disputes was declared by Congress to be '[f]inal adjustment by a method agreed upon by the parties' (§ 203(d) of the Act, 29 USC § 173(d)). 'That policy can be effectuated only if the means chosen by the parties for settlement

of their differences under a collective bargaining agreement is given full play.' " (emphasis supplied) (U. S. at 263, L. ed. at 480)

And in *Wiley & Sons v. Livingston*, 376 U. S. 543, 84 S. Ct. 909, 11 L. ed. 2d 898 (1964), this Court said:

"This Court has in the past recognized the central role of arbitration in effectuating national labor policy. Thus, in *Warrior & Gulf Navigation Co., supra*, 363 US at 578, 4 L. ed. 2d at 1415, arbitration was described as 'the substitute for industrial strife' and as 'part and parcel of the collective bargaining process itself'. . ." (U. S. at 549, L. ed. at 904)

"The preference of national labor policy for arbitration as a substitute for tests of strength between contending forces could be overcome only if other considerations compellingly so demanded. We find none . . ." (U. S. at 549-550, L. ed. 904)

"Compare the principle that when a contract is scrutinized for evidence of an intention to arbitrate a particular kind of dispute, national labor policy requires, within reason, that 'an interpretation that covers the asserted dispute' . . . be favored." (U. S. at 550, L. ed. at 905)

Petitioner's references to *Marine Transport Lines, Inc. v. Curran*, 55 L. C. 11,748 and *Gulf & South American S. S. Co. v. National Maritime Union of America*, 360 F. 2d 63 (1966) are completely inapplicable to this case.

In the *Marine Transport Lines* case *(supra)*, the Arbitrator's Award admittedly enjoined a work stoppage and this was the sole and exclusive purpose for that action.

In the *Gulf & South American S. S. Co.* case *(supra)*, the arbitrator's award was not enforced simply because the arbitrator had no jurisdiction to issue it in the first place. This is unmistakably clear from the Court's decision where it is stated that:

"The question here turns on the jurisdiction of the arbitrator . . . . There was no showing of jurisdiction in the arbitrator. . . . The power of the arbitrator lies in the subject matter being drawn from the agreement to arbitrate and absent such power or jurisdiction, there may be no judicial enforcement." (id. at 65)

(B) Commentaries on the Enforcement of Arbitrator's Awards Under Section 301.

The enforcement of Arbitrator's Awards under Section 301 has been the subject of considerable comment since this Court's decision in *Lincoln Mills (supra)*. Most of the commentators agree that it is absolutely essential to enforce these awards in order to preserve and perpetuate our national labor policy favoring voluntary arbitration.

Givens in "Section 301, Arbitration and the No-Strike Clause", 11 Lab. L. J. (1960) states that:

"Thus the basic guideposts of the law of grievance arbitration under Section 301 are now clear: Federal jurisdiction exists both to enforce agreements to arbitrate and to enforce the resulting awards, and the jurisdiction and decisions of arbitrators will be upheld whenever there is any reasonable basis to do so in the collective agreement." (id. at 1009)

"In the light of these decisions, it is now clear that the federal courts have jurisdiction not only to enforce agreements to arbitrate in collective bargaining contracts, but also to enforce the resulting awards; and that the authority granted to the arbitrator by the parties to such agreements to interpret the agreements will be upheld and respected by the courts as vital to the workings of collective bargaining." (id. at 1020)

Aaron in "Strikes in Breach of Collective Agreements: Some Unanswered Questions" 63 Colum. L. Rev. 1027 (1963) states:

". . . that Section 301 does not, even as interpreted and applied in the Sinclair case, preclude the issuance of court orders that have the same effect as injunctions. For example, either party may be compelled by court order to arbitrate a grievance and to abide by the arbitrator's award . . . The well-documented history of the evils of government injunction as well as more recent studies of the labor injunction in action, makes it clear that injunctions against strikes give the employer entirely different and infinitely more effective relief than a suit for damages or an order to arbitrate . . ." (id. at 1037)

". . . The Court itself in the Sinclair case distinguished mandatory injunctions to arbitrate and orders enforcing arbitration awards from injunctions against peaceful strikes on the ground that refusals to arbitrate or to abide by awards are not types of conduct that 'the specific prohibitions of the Norris-LaGuardia Act withdrew from the injunctive powers of the United States courts.' " (id. at 1037-1038)

And Cox in "Reflections Upon Labor Arbitration", 72 Harv. L. Rev. 1482 (1959), said:

"Our footing will be more secure if we start from the premise that a suit to compel arbitration under section 301 is an action to enforce a promise. The promise is the undertaking to arbitrate and to carry out the award. Common-law actions to enforce arbitration awards have been entertained on this theory for generations . . ." (id. at 1507)

For brevity, the Court's attention is called to the following articles.[8]

8. Givens, "The Validity of Delayed Awards Under Section 301, Taft-Hartley Act, 16 Arb. J. 161 (1961).

Davidson, Jr., "Enforcement of Collective Bargaining Agreements Under Section 301", 17 Mercer L. Rev. 442 (1966).

(C) The Failure to Enforce the Arbitrator's Award in This Case Would Be Contrary to Our National Labor Policy as Set Forth in Sections 201, 203 and 301 of the Labor Management Relations Act.

Section 201 of the Labor Management Relations Act of 1947, 61 Stat. 152, 29 U. S. C. A. 171, provides in part as follows:

> "That it is the policy of the United States that—
>
> (b) the settlement of issues between employers and employees through collective bargaining may be advanced by . . . voluntary arbitration . . . or by such methods as may be provided for in any applicable agreement for the settlement of disputes . . . ."

Section 203(d) of the Labor Management Relations Act of 1947, 61 Stat. 153, 29 U. S. C. A. 173, provides in part that:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement . . . ."[9]

The above sections, together with Section 301, are the Congressional declarations of national policy which have

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"Section 301(a) and the Federal Common Law of Labor Agreements", 75 Yale L. J. 877 (1966).

Mintz, "Court Review of Labor Arbitration Awards", 40 Fla. L. J. 33 (1966).

Stern, "The Norris-LaGuardia Act and State Court Injunctions Against Strikes in Breach of a Collective Bargaining Agreement Under Section 301: Accommodation v. Incompatibility", 39 Temp. L. Q. 65 (1965), where *Atkinson* (*supra*) is distinguished at pp. 72-73; 79.

9. The original dispute in this case arose over the interpretation of the collective bargaining agreement. The arbitrator's award was the final adjustment agreed upon by the parties and the enforcement of that award fits squarely the national policy as enumerated in Section 203(d).

established voluntary arbitration as the "kingpin of our national labor laws". This is evident from the legislative history of those sections of the Act. Section 201 and 203 are contained in Title II of the Act and Section 301 is contained in Title III. When Senator Taft explained the purpose of these Titles, he said:

> "What is the purpose of Title III? The purpose of Ttitle III is to give the employer and the employee the right to go to the Federal courts to bring a suit to enforce the terms of a collective bargaining agreement—exactly the same subject matter which is contained in Titles I and II. It is impossible to separate them . . ." (Legislative History of the Labor Management Relations Act, 1947, at 1074).

Referring again to Title III, Senator Taft said:

> "I cannot conceive of any sound reason why a party to a contract should not be responsible for the fulfillment of the contract; it is outside my comprehension how anyone can take such a position." (id. at 1146).

Senator Taft also said:

> "If there is one subject upon which every unprejudiced person is agreed, it is that unions must be made responsible for their acts, that collective bargaining cannot continue to be an important factor in our labor relations unless both parties are bound by their contracts . . ." (id. at 1626).

Pertinent to this case, Senator Taft said:

> "Arbitration provisions are entirely legal and remain effective under our law. As long as either party *abides by the arbitration decisions*, he, of course, is not subject to suit." (emphasis supplied) (id. at 1627).

The above statement clearly contemplated a suit such as is involved in this case to enforce an "arbitration deci-

sion" where the petitioner refused to "abide by" the award.

The House Conference Report No. 510, on H. R. 3020 stated that:

> "The Senate amendment contained a provision which does not appear in Section 8 of existing law. This provision would have made it an unfair labor practice to violate the terms of a collective bargaining agreement or an agreement to submit a labor dispute to arbitration. The conference agreement omits this provision of the Senate amendment. Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." (id. at 545).

And Senate Report No. 105 on S 1126 under the caption: "Enforcement of Contract Responsibilities", stated that:

> "The committee bill makes collective bargaining contracts equally binding and enforceable on both parties." (id. at 421)

In the House debate it was pointed out that the provisions of the Act which became Section 301 contemplated "not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances . . ." (Cong. Rec. House—p. 840).

Senator Thomas in explaining Title III said:

> "I now come to title III, which is very brief, and merely provides for suits by and against labor organizations, and requires that labor organizations, as well as employers, shall be responsible for carrying our contracts legally entered into as the result of collective bargaining. That is all title III does. I cannot conceive of any sound reason why a party to a con-

tract should not be responsible for the fulfillment of the contract; it is outside my comprehension how anyone can take such a position." (id. at 1145-1146)

Petitioner's argument that there is no jurisdiction under Section 301 to enforce an Arbitrator's Award is contrary to all of the authorities cited above. The end result of such an argument is to destroy our national labor policy as set forth above and to cause chaos in collective bargaining. According to an article by former Justice Arthur J. Goldberg, "A Supreme Court Justice Looks at Arbitration," 2 Arb. J. 13 (1965), ninety-one percent of the collective bargaining agreements surveyed by the Bureau of National Affairs provided for arbitration of some kind and eighty-nine percent contained some variety of no-strike clauses. If Arbitration Awards cannot be enforced, all of those collective bargaining agreements will be similarly affected as the one involved in the instant case. If the petitioner is not bound by an agreed to final and binding Arbitration Award, then neither is the respondent or any other employer or union bound by any future Arbitration Award. Such a situation is not only incomprehensible but is almost unimaginable since it would make a mockery out of our entire arbitration process. Who is going to take a case to arbitration if he knows that the other party does not have to abide by the award? And what is the point of Federal Courts having the power, as conceded by petitioner, to compel parties, under Section 301, to proceed with arbitration and no power to enforce the resulting award? To borrow a phrase from petitioner such a situation would surely result in an "excursion into anarchy" (Brief p. 20).

(D) The Norris-LaGuardia Act Does Not Apply to the Enforcement of Arbitration Awards.

Petitioner's argument that the enforcement of the Arbitrator's Award in this case violates the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. A. 104, is without any

foundation. Actually, the reverse is true since the Norris-LaGuardia Act, as well as the Taft-Hartley Act, was designed to encourage settlement of disputes by voluntary arbitration.

This Court has already ruled that the Norris-LaGuardia Act does not apply to the enforcement of arbitration agreements. In *Lincoln Mills* (*supra*), this Court pointed out that: "The failure to arbitrate was not a part and parcel of the abuses against which the Act was aimed", and concluded that:

> "The congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of § 7 of the Norris-LaGuardia Act." [10] (U. S. at 458-459, L. ed. at 982)

In the *Sinclair* case (*supra*), relied upon by petitioner, this Court said:

> "The plain fact is that § 301, as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional commands of the Norris-LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that

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10. In *Textile Workers Union v. American Thread Co.*, 113 F. Supp. 137 (D. Mass. 1953), a decision by Judge Wyzanski cited with approval in *Lincoln Mills*, the Court said:

> "The Norris-LaGuardia Act is likewise a statute earlier than the Taft-Hartley Act. The general structure, detailed provisions, declared purposes, and legislative history of that statute show it has no application to cases where a mandatory injunction is sought to enforce a contract obligation to submit a controversy to arbitration under an agreement voluntarily made." (id. at 142)

may have been made arbitrable by the provisions of an effective collective bargaining agreement." (U. S. at 213-214, L. ed. at 452)

Furthermore, a distinction can and should be made between the type of injunction proscribed by Section Four of the Norris-LaGuardia Act which is a "prohibitory injunction", and the "mandatory injunction" which has been approved by this Court for the enforcement of arbitration agreements.

See also the dissenting opinion in *Sinclair* (*supra*) where Justice Brennan stated:

> "The Court has long acted upon the premise that the Norris-LaGuardia Act does not stand in violation . . . Accordingly, the Court has recognized that Norris-LaGuardia does not invariably bar injunctive relief when necessary to achieve an important objective of some other statute in the pattern of labor laws . . . Insistence upon strict application of Norris-LaGuardia to a strike over a dispute which both parties are bound by contract to arbitrate threatens a leading policy of our labor relations law . . . Arbitration is so highly regarded as a proved technique for industrial peace that even the Norris-LaGuardia Act fosters its use." (U. S. at 217, L. ed. at 454).

Mendelsohn in his article, "Enforceability of Arbitration Agreements under Taft-Hartley Section 301", 66 Yale L. J. 167 (1956) which was cited with approval in *Lincoln Mills* (*supra*), pointed out that:

> "And section 8 of the Norris-LaGuardia Act specifically encourages arbitration by requiring that no relief may be granted until 'every reasonable effort to settle such dispute either by negotiation . . . or voluntary arbitration' has been made . . . It should be remembered that both the Norris-LaGuardia Act and the Arbitration Act were drafted and enacted when the economic conditions and the development of

legal institutions were nowhere near their present status. The Norris-LaGuardia Act was intended to discourage labor injunctions as the term was then understood. Whether it was also intended to interfere with the contractual obligations freely and voluntarily agreed upon by the parties is another question . . . Thus, the histories behind the acts and their purposes at the time of enactment are clearly inapposite to the economic and industrial development of the present era. Either they should be amended by Congress, or the Court should interpret them in light of current conditions. To interpret them according to the purposes of a past generation is to retard if not resist the necessary and natural growth of our legal system . . . Labor organization has now reached a stage of development where it should be as bound by its contractual obligations as is any ordinary individual. If in return for collective benefits the union agrees not to strike, it should be held to both the benefits and the burdens of the contract. If the parties agree to arbitrate, the agreement should be enforceable—and effectively—regardless upon whom the onus may fall." (id. at 181-183)

Cox in "Current Problems in the Law of Grievance Arbitration, 30 Rocky Mt. L. Rev. 247 (1958), said:

> "The Norris-LaGuardia Act was enacted before collective bargaining agreements had become the cornerstone of sound industrial relations, and most of the proponents of its philosophy also held that a collective bargaining agreement should carry only moral and economic sanctions. Congress rejected their approach in Section 301 by providing for suits for violation of the agreement . . ." (id. at 255)

Givens in "Section 301, Arbitration and the No-Strike Clause" (*supra*) said:

". . . enforcement of arbitration may be a sufficiently specific federal policy under Section 301 to justify injunctive relief in spite of the Norris-LaGuardia Act . . . The answer is that there are several highly significant differences between arbitration and direct judicial intervention: The original authority of an arbitrator derives from the consent of the parties, not governmental compulsion, and therefore his authority is not subject to the potential abuses against which the Norris-LaGuardia Act was aimed . . ." (id. at 1013-1014)

Givens in "Injunctive Enforcement of Arbitration Awards", 17 Lab. L. J. 292 (1966) also pointed out that:

"It is now clear that awards themselves as well as agreements to arbitrate are enforceable under Section 301 . . . Where the order sought to be judicially enforced is one made by a tribunal created by agreement of the parties sought to be bound, the reasons for the Norris-LaGuardia Act's ban on injunctive relief would not appear to apply . . . Further, an order enforcing an award of an arbitrator need not in terms be an order directly enjoining the strike, and thus may not fall within the literal language of Norris-LaGuardia." (id. at 293-294)

And Loeb in "Accommodations of the Norris-LaGuardia Act to Other Federal Statutes", 11 Lab. L. J. 473 (1960), said:

"Furthermore, it is arguable from Section 8 that arbitration is to be encouraged in labor-management relations—a further indication that the Norris-LaGuardia Act should not be applied to deny enforcement of an arbitrative agreement . . ." (id. at 488)

"While it seems fairly certain that the 1932 Congress did not have in mind the possibility of a suit for an injunction based on a contract, yet the fact

remains that the language of Section 4(a) of the Norris-LaGuardia Act, which clearly proscribes enjoining a peaceful strike, does not distinguish between actions founded on tort and contract. Nevertheless, it seems that to the extent that the current labor policy of the federal government includes placing the force of law behind labor-management agreements, this proscription has become anachronistic; and the courts would therefore be justified in relaxing the anti-injunction policy in order to enforce that to which the parties themselves have agreed. The anti-injunction proscription seems particularly unsuited to a case in which a union has struck rather than comply with a compulsory arbitration agreement. . . ." [11] (id. at 489)

II. The Action Below Was Not Moot.

Petitioner argues that respondent's complaint "was based on an alleged work stoppage on July 29, 1965", and since the longshoremen later returned to work the matter became moot. (No such work stoppage is actually averred in the complaint.) This statement demonstrates petitioner's misconstruction of the action below. For respondent's complaint was not based upon any work stoppage. It was based upon "the stated and confirmed intent of the union to disregard the Arbitrator's Award" (R. 6). The complaint did not pray that any work stoppage be enjoined. Rather it prayed "that the Court set an immediate hearing and enter an order enforcing the Arbitrator's Award" (R. 6).

The suit in this case did not become moot because the men had gone back to work at the time of the first hearing on August 3, 1965. This suit involved the enforcement of

11. See also: Lesnick, "State-Court Injunctions and the Federal Common Law of Labor Contracts: Beyond Norris-LaGuardia", 79 Harv. L. Rev. 758-759 (1966) and Wellington & Albert, "Statutory Interpretation and the Political Process: A Comment on Sinclair v. Atkinson", 72 Yale L. J. 1551-1553, 1555, 1557-1558 (1963).

an Arbitrator's Award which interpreted a provision of a collective bargaining agreement between the parties which extends to September 30, 1968.[12] The men returned to work, as was pointed out to the District Court, simply because the operators of the vessel under "economic duress" (R. 40), could not afford to keep the vessel idle any longer awaiting legal redress to the Union's flagrant violation of the Arbitrator's Award (R. 40; 43-44). The Court was advised and recognized that this was not a "legal solution" to the problem and it was for this reason that the Court decided to hear respondent's testimony.[13] The Court continued the case without a decision after receiving the assurances of counsel for the Union that the Union was bound by the Arbitrator's Award and intended to abide by it.[14]

However, these assurances were broken within a short period of time and the wisdom of the learned trial judge in keeping this case open and retaining jurisdiction should be commended. For industrial peace on the waterfront requires a prompt legal resolution of disputes.[15]

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12. There is a distinct difference between an arbitration involving a specific incident or a specific individual and an arbitration involving the interpretation of a contract clause such as was involved in this case. It was agreed that the arbitrator's interpretation would be final and binding for the balance of the contract whenever the set-back clause was invoked. (See Plaintiff Exhibit No. 1 and R. 115.) The Arbitrator's Award does not limit his interpretation to specific incidents, work stoppages, or to particular vessels. Rather it is a general and binding interpretation of the set-back clause for the remainder of the contract.

13. Indeed, the fact that respondent wanted to and did present its testimony at the first hearing, after the men returned to work, demonstrates that respondent's case was not based on any work stoppage and was not moot.

14. See footnote 3 *supra*.

15. The Court of Appeals also commended the trial judge in this regard:

> "The Court continued the case for the time being against the possibility of a like practical condition arising. The wisdom of so doing developed when an identical type of work dis-

Actually what petitioner is seeking to accomplish is the avoidance of an unfavorable ruling against it by insisting that this issue should be "re-arbitrated" (R. 100).[16] As was pointed out in the Court below, this would make a "mockery" out of the whole arbitration process (R. 109-110). The sole purpose of arbitration is to settle industrial disputes and neither side has a right to say that it will not be bound by or abide by an Arbitrator's Award because it does not like it. If the Union could take that position in this case, the employer could take the same position with respect to other awards which were adverse and this would lead to chaos on the waterfront or in any other industry (R. 110). Fortunately, the law is well settled that where the parties are the same and the issue is the same an Award of an Arbitrator acts like a judgment of a Court and the doctrine of res judicata and collateral estoppel apply. See *Todd Shipyards Corp. v. Industrial U. of Marine & Ship Wkrs.*, 242 F. Supp. 606 (D. N. J. 1965).

The case cited by petitioner in support of its argument that this case was moot and that the Court should not have retained jurisdiction is not even remotely pertinent to this case. In *Amalgamated Association v. Wisconsin Emp. Rel. Bd.*, 340 U. S. 416, 71 S. Ct. 373, 95 L. ed. 389 (1951), the Arbitration Award had expired and was superseded by

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turbance and of more serious proportions broke out on September 13th, was immediately brought before the Court and promptly concluded. The issue was the very same continuing quarrel regarding the governing labor agreement which directly affected the entire Port of Philadelphia." (R. 125-126)

16. Petitioner's footnote 4 (Brief pp. 4-5) regarding the alleged re-arbitration of disputes is erroneous. The parties never re-arbitrated an award involving an interpretation of a contract clause similar to this dispute. The award referred to (No. 78, R. 118-119) did not involve the same problem of interpretation. It involved five separate disputes regarding the number of men required for various operations and cargoes. But instead of reversing himself in the prior decisions, as petitioner contends, the Arbitrator specifically ruled that he affirmed those decisions.

agreement of the parties. This is a far cry from the instant case where the Award covered an interpretation of a contract which does not expire for another year.

III. The Court Below Did Not Violate Federal Rules of Civil Procedure 52(a) and 65(d) in Entering the Order Enforcing the Arbitrator's Award.

Petitioner asserts that the Trial Court violated Federal Rule of Civil Procedure 52(a) because it failed to make findings of fact and conclusions of law and that the order appealed from violated Rule 65(d) because it allegedly failed to set forth the reasons for its issuance and "the act or acts sought to be restrained."

Rule 52(a) by its terms does not apply to decisions on "motions". This action was on a motion for an order against the petitioner to show cause why it had not complied with the Arbitrator's Award (R. 31). Hence by its terms Rule 52(a) did not apply to this decision.

Secondly, it should be noted that the petitioner took this appeal the day following the entry of the order of the Court below and by its action precluded the Court below from drafting findings of fact and conclusions of law if such were required. Finally, petitioner refused to introduce any evidence at the hearings below to contradict the respondent's testimony although at each hearing the Court gave petitioner ample opportunity to present such testimony (R. 46; 73-74; 101). At the conclusion of respondent's testimony on September 15, 1965, counsel for petitioner said: "I don't intend to offer anything, your Honor . . ." (R. 102). Consequently, there was no issue of fact before the District Court. The facts as set forth in respondent's complaint and testimony were admitted and uncontradicted. Those facts clearly showed that the petitioner had brazenly refused to abide by the Arbitrator's Award. Under these circumstances, findings of fact and conclusions of law were not required. See Barron and Holtzoff (Wright Revision),

Vol. 2b Section 1126, at 500, where it is stated in discussing Rule 52(a) that:

> "Findings of fact are unnecessary if factual issues are not present or if the record clearly discloses without necessity of findings the basis on which the injunction was granted or denied."

In *Douds v. Local 1250,* 170 F. 2d 695 (2d Cir. 1948), it was held that the absence of findings of fact required by Rule 52(a) was only a non-jurisdictional defect where the injunction order was attacked only on constitutional grounds.

See also Judge Yankwich's comments in 8 F. R. D. 271, *Findings in the Light of the Recent Amendments to the Federal Rules of Civil Procedure* wherein he stated that:

> "It has been the law of pleading that where the facts are undisputed or are agreed or stipulated to, no findings are necessary. Necessarily so. Because in such cases, the Court merely determines the law arising from the uncontradicted facts." (id. at 281)

See also to the same affect *United States v. Prendergast,* 241 F. 2d 687 (4th Cir. 1957); *Rossiter v. Vogel,* 148 F. 2d 292 (2d Cir. 1945) and *Hurwitz v. Hurwitz,* 136 F. 2d 796 (D. C. Cir. 1954).

Petitioner also contends that the order of the Court below did not comply with Federal Rule of Civil Procedure 65(d) because it allegedly failed to set forth the reasons for its issuance and the act or acts sought to be restrained.

Rule 65(d) by its terms applies only to an "injunction or restraining order". The order appealed from was not an injunction or restraining order as contemplated by Rule 65(d) but rather was an order for specific performance of the Arbitrator's Award. In addition, under Rule 65(e) there is a serious question as to whether Rule 65(d) applies to orders involving labor disputes between an employer and an employee. See Barron and Holtzoff (Wright Revi-

sion), Vol. 3, Section 1438 at 503. Furthermore, even if the order appealed from should be considered as a "mandatory injunction" as referred to in some of the cases cited above, there was compliance with Rule 65(d).

The order clearly and concisely explained the reason for its issuance, was specific in its terms and described in reasonable detail the act it covered by providing that the Award of the Arbitrator should "be specifically enforced" by the Union and that the petitioner should "comply with and abide by the said Award." As the District Judge pointed out anyone who does not understand what was meant by the Court's order does not understand the English language (R. 112). This is particularly applicable to the able counsel for petitioner who participated in the hearings before the Arbitrator which resulted in the Arbitrator's Award and the three hearings before the Court below where the evidence was uncontradicted that defendant Union had violated the Award and stated that it did not intend to "abide by" and "comply with" the said Award.

CONCLUSION.

The decisions of this Court which have interpreted Section 301 of the Labor Management Relations Act make it crystal clear that there is jurisdiction under that section to enforce a final and binding Arbitration Award by an action for specific performance. The Norris-LaGuardia Act has no application whatsoever to the enforcement of an Arbitrator's Award. In fact, the failure to enforce an award under a voluntary arbitration agreement would completely destroy our national labor policy which encourages the settling of labor disputes by the arbitration process. Therefore, the decision of the Court below should be affirmed.

Respectfully submitted,

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